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Th11e



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APPEAL STAFF REPORT - SUBSTANTIAL ISSUE DETERMINATION

Appeal numberA-3-SLO-04-016 (Public Access View Deck)

ApplicantsCounty of San Luis Obispo General Services Dept. (Parks Division)

Appellant.....Jim Marrocco

Local governmentSan Luis Obispo County (D020261P)

Local decisionApproved with conditions (January 27, 2004)

Project locationBay Street, Baywood peninsula neighborhood, Los Osos (west side of Pasadena Drive, approximately 500 feet north of Santa Ysabel), San Luis Obispo County.

Project descriptionConstruct a 226 square foot public access view deck and walkway approach.

File documents.....San Luis Obispo County Certified Local Coastal Program; County Final Local Action Notice (D020261P).

Staff recommendation ...No Substantial Issue

Summary of staff recommendation: San Luis Obispo County approved a proposal to construct a 226 square foot public access view deck at the end of Bay Street in the Baywood peninsula neighborhood of Los Osos, San Luis Obispo County. The public viewing platform resulted from a quiet title action initiated by the neighbors located north and south of the old Bay Street right-of-way. In 1998, a stipulated judgment (that resulted from the quiet title action) gave each adjacent neighbor approximately 4,250 square feet of the old Bay street right-of-way in exchange for leaving a 500 square foot area for a public access viewing platform. The Appellant contends that the approved viewing deck would be incompatible with the small-scale character of the neighborhood, would disturb adjacent residences, and would adversely impact public views due to the mass, scale, and design approved.

The scenic and visual qualities of the Baywood peninsula are an important public resource. However, the Appellant's contentions are not persuasive and not raise a substantial issue requiring the Commission to take jurisdiction over the project. The County has developed a modest project, which is generally consistent with the surrounding character of Baywood, and has been designed to address coastal views and the privacy of adjacent residents. The incremental impact of this structure on the public viewshed would be negligible because it is development between existing houses along a stretch of coastal bluffs already impacted by residential development.



California Coastal Commission

March 18, 2004 Meeting in Monterey

Staff: J. Bishop Approved by:

While not addressed in the contentions of appeal, it is important to note that the project is a high priority use under the Local Coastal Program (LCP) because it promotes public access, coastal recreation, and visitor-serving uses. The proposed project provides for the implementation of a public viewing deck already agreed upon and anticipated by the neighborhood. While a number of issues are raised by the appeal, the overall benefits to public access and recreation far outweigh the insignificant impacts to coastal resources posed by project implementation.

Staff recommends that the Commission find that **no substantial issue** exists with respect to this project's conformance with the certified San Luis Obispo County certified LCP and decline to take jurisdiction over the coastal development permit for the project.

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1. Appeal of San Luis Obispo County Decision

A. San Luis Obispo County Action

San Luis Obispo County approved this proposed project subject to multiple conditions on January 27, 2004 (see exhibit C for the County's adopted findings and conditions on the project). The County's approval was by the Board of Supervisors following an appeal of the Planning Commission's original approval. The current Appellants in this matter before the Commission are the same persons who appealed the Planning Commission's decision.



Notice of the Board of Supervisor's action on the coastal development permit (CDP) was received in the Coastal Commission's Central Coast District Office on February 19, 2004. The Coastal Commission's ten-working day appeal period for this action began on February 20, 2004 and concluded at 5pm on March 4th, 2004. One valid appeal (see below) was received during the appeal period.

B. Appeal Procedures

Coastal Act Section 30603 provides for the appeal of approved coastal development permits in jurisdictions with certified local coastal programs for development that is (1) between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea where there is no beach, whichever is the greater distance; (2) on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff; (3) in a sensitive coastal resource area; (4) for counties, not designated as the principal permitted use under the zoning ordinance or zoning district map; and (5) any action on a major public works project or energy facility. This project is appealable because it is located between the first public road and the sea; is within 100 feet of an estuary; and is within a sensitive coastal resource area.

The grounds for appeal under Section 30603 are limited to allegations that the development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act. Section 30625(b) of the Coastal Act requires the Commission to conduct a de novo coastal development permit hearing on an appealed project unless a majority of the Commission finds that "no substantial issue" is raised by such allegations. Under Section 30604(b), if the Commission conducts a de novo hearing, the Commission must find that the proposed development is in conformity with the certified local coastal program. Section 30604(c) also requires an additional specific finding that the development is in conformity with the public access and recreation policies of Chapter 3 of the Coastal Act, if the project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone. This project is located between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone, and thus this additional finding would need to be made in a de novo hearing.

The only persons qualified to testify before the Commission on the substantial issue question are the Applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding substantial issue must be submitted in writing. Any person may testify during the de novo stage of an appeal.

C. Appellants' Contentions

The Appellant contends that the approved project is inconsistent with the LCP visual and scenic resource protection policies because the approved project would be incompatible with the style and natural features of the neighborhood and would adversely impact public views due to the mass, scale, and design approved. In addition, the Appellant contends that the project does not adequately protect the privacy of adjacent residents. Please see exhibit D for the Appellants' complete appeal document.



2. Staff Recommendation on Substantial Issue

The staff recommends that the Commission determine that **no substantial issue** exists with respect to the grounds on which the appeal was filed. A finding of no substantial issue would mean that the County's decision in this matter would be final (conversely, a finding of substantial issue would bring the project under the jurisdiction of the Commission for hearing and action).

Motion. I move that the Commission determine that Appeal Number A-3-SLO-04-016 raises **no** substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.

Staff Recommendation of No Substantial Issue. Staff recommends a **yes** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

Resolution to Find No Substantial Issue. The Commission hereby finds that Appeal Number A-3-SLO-04-016 does not present a substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act regarding consistency with the Certified Local Coastal Program and/or the public access and recreation policies of the Coastal Act.

Recommended Findings and Declarations

The Commission finds and declares as follows:

3. Project Description

A. Project Location

The proposed development is located on the west side of Pasadena Drive, approximately 500 feet north of Santa Ysabel on an abandoned portion of Bay Street, in the community of Los Osos. The proposed viewing deck is located on an easement granted to the County as part of a 1998 quiet title action which resulted in most of the Bay Street right-of-way being given to adjacent landowners (see Exhibit B). At this time, Coastal Commission staff is unable to confirm that San Luis Obispo County has processed a Coastal Development Permit for the road abandonment. The 500 square foot project site (dedicated easement area) is undeveloped, rectangular in shape, and slopes gently to the west. The prominent scenic view in this area is from Pasadena Drive through gaps between existing residences. The surrounding parcels are developed with single-family residences (see Exhibit A for a location map and photos). The site is located in the Residential Single Family land use category of the certified LCP.

B. County Approved Project

The County approved project includes construction of a 226 square foot public access view deck and a 6 foot wide by 33 foot long path from Pasadena Avenue. The structure would be founded on buried pre-cast footings extending down below the sandy top layer of the site. A 6 foot wide decomposed granite



path would extend from the edge of pavement on Pasadena Avenue westerly towards the view deck. A second portion of the path is made of wood and slopes gradually down from street level in an attempt to lower the overall elevation of the main deck. The main viewing deck would be 226 square feet total and composed of redwood lumber. The deck would also include safety railing on the perimeter of the viewing platform.

See exhibit B for County-approved plans and exhibit C for the adopted County findings, and conditions approving the project.

4. Substantial Issue Findings

A. Policies Cited by Appeal

The appeal contentions generally state that the approved project would be incompatible with the neighborhood character and would adversely impact public views due to the mass, scale, and design approved. The following LCP policies and ordinances have been cited:

Policy 1: Protection of Visual and Scenic Resources

Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas as sensitive habitats are to be preserved, protected and in visually degraded areas restored where feasible. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD.]

Policy 5: Landform Alterations

Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO SECTION 23.05.034 OF THE CZLUO.]

Policy 6: Special Community and Small-Scale Neighborhoods

Within the urbanized areas defined as small-scale neighborhoods or special communities, new development shall be designed and sited to compliment and be visually compatible with existing characteristics of the community which may include concerns for the scale of the new structures, compatibility with unique and distinguishing architectural historical style, or natural features that add to the overall attractiveness of the community. [THIS POLICY SHALL BE IMPLEMENTED AS A STANDARD AND PURSUANT TO CHAPTER 23.11 (DEFINITIONS) OF THE CZLUO.]

In addition the Appellant contends that the project violates the following LCP ordinances related to



privacy needs of adjacent residences:

CZLUO Section 23.04.420h(2) - Type and extent of improvements – required findings. *The improvements...shall be required to an extent where such improvements:*

- (i) Are necessary to either assure reasonable public access, protect the health and safety of access users, assure and provide for proper long-term maintenance of the accessway, or protect the privacy of adjacent residents.*
- (iv) Incorporate adequate measures to protect the privacy and property right of adjoining property owners and residents.*

CZLUO Section 23.04.420k – Sighting criteria for coastal accessway. *In reviewing a proposed accessway, the applicable review body shall consider the effects that a public accessway may have on adjoining land uses in the location and design of the accessway. When new development is proposed, it shall be located so as not to restrict access or to create possible privacy problems. Where feasible, the following general criteria shall be used in reviewing new access locations, or the location of new development where coastal access considerations are involved:*

- (3) Review of the accessway shall consider; safety hazards, adequate parking provisions, privacy needs of adjacent residences, adequate signing, and levels of improvements necessary to provide for access;*
- (4) Limiting access to pass and repass should be considered where there are nearby residences, where topographic constraints make the use of the beach dangerous, where there are habitat values that can be disturbed by active use.*

B. Analysis of Consistency with Cited Policies

As detailed below, the appeal does not raise a substantial issue with respect to the project's conformance with the San Luis Obispo County LCP.

1. Neighborhood Compatibility

The LCP requires new development in small-scale neighborhoods or special communities to be visually compatible. LCP Policy 6 for Visual and Scenic Resources states:

Within the urbanized areas defined as small-scale neighborhoods or special communities, new development shall be designed and sited to compliment and be visually compatible with existing characteristics of the community which may include concerns for the scale of the new structures, compatibility with unique and distinguishing architectural historical style, or natural features that add to the overall attractiveness of the community.



The Appellants contend that the size and scale of the project is not compatible with style and natural features of the neighborhood along Pasadena Avenue. This neighborhood is defined in the LCP as a small-scale neighborhood due to the low-density nature of development that is consistent with the topography and vegetation of the Baywood peninsula.

It is the intent of this policy to preserve unique and attractive landscapes that serve as an attraction for both local residents and visitors. Clearly, at approximately 226 square feet, the proposed public access view deck is much smaller in size and scale than that of residential development that is currently found along this part of Pasadena Drive. There are several homes along the seaward side of this part of Pasadena Drive that are 2 stories in height. In addition, on the inland side of Pasadena Drive, there are a series of 2 and 3 story residential structures significantly larger than that proposed project. More importantly, the proposed viewing deck will not diminish the public's attraction to the unique features of the neighborhood, rather, a public access improvement such as this will enhance the public's ability to enjoy the unique and attractive features of the landscape that make this neighborhood special.

The County found the project to be consistent with the character of the immediate neighborhood because the project is similar to, and will not conflict with, the surrounding lands and uses. The County agreed to reduce the size roughly in half (from 446 square feet to 226 square feet) and lower the overall elevation of the structure to temper visual intrusions into the scenic backdrop. The Appellant has prepared a series of comparisons of the proposed project when measured against the six closest public access viewing decks on the Peninsula. These comparisons corroborate the County findings and indicate that the proposed project is fairly average in terms of useable square feet and coverage.

In sum, the County-approved project is not atypical of the size and scale of development along this stretch of Pasadena Drive and will not diminish the unique and attractive landscapes of the neighborhood. Contrary to the Appellant's beliefs, development of a public access viewing platform will have an overall benefit to the attractiveness of the neighborhood. The project is substantially consistent with neighboring development and other view decks on the Baywood peninsula. Thus, the issue does not rise to the level of a substantial issue in terms of the project's conformance with the certified LCP.

2. Visual Resources

In addition and related to the compatibility issues described above, the LCP protects the public viewshed, particularly along the shoreline. The LCP Policy 1 states:

Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas as sensitive habitats are to be preserved, protected and in visually degraded areas restored where feasible.

The Appellants contend that the approved project would negatively impact public views. The appeal states that the deck itself will block 30% of the view corridor between houses on Pasadena Drive. In this case, the approved view deck is development between two existing residences. Although it will incrementally add to the amount of development within the public viewshed from the street, its impact would be less than significant within the scope of the existing view. Although some views directly in



front of the new deck would be impaired, the public viewing benefits of the project far outweigh any minor viewshed impacts.

During the local review of the project a number of design changes were made to lessen the impacts of the deck on public views. First, the County reduced the size of the deck nearly in half. Second, the main platform was lowered in elevation to minimize visual intrusions into the scenic backdrop of the Bay. Third, alternative materials have been incorporated into the design of the railings to minimize visual impacts. Lastly, the platform was moved closer to the street to improve overall public accessibility. With these design elements included in the project, visual impacts are minimal.

Finally, the Appellant states that the project is inconsistent with Policy 4 for Visual and Scenic Resources. However, Policy 4 is specifically related to new development in rural areas. This project is located in an urban area of Los Osos. Therefore, this cited policy does not apply to this project and is not analyzed in this report.

This issue does not rise to the level of a substantial issue in terms of the project's conformance with the certified LCP.

3. Landform Alterations

The Appellants contend that the new deck will require excessive amounts (more than 5 cubic yards) of sand excavation. With respect to landform alterations, the LCP states:

Grading, earthmoving, major vegetation removal and other landform alterations within public view corridors are to be minimized. Where feasible, contours of the finished surface are to blend with adjacent natural terrain to achieve a consistent grade and natural appearance.

In this case, no grading is proposed for the project. The only landform alteration to occur is were 6 pre-cast posts enter the ground to support the decking structure. The County reasonably concluded that the amount of sand to be displaced is the minimum necessary to safely support the structure. In a letter to the Planning and Building Department, Jan DiLeo the County Parks Planner says: "The location of the deck is in part to provide disabled access, minimize footings, and also to accommodate the deck a little closer to the road right-of-way." In fact, a pier foundation such as the one approved by the County will displace far less sand than other foundation types such as concrete or slab. Furthermore, the area where sand is displaced will be below the deck of the platform and out of public view. The area surrounding the structure will maintain a natural appearance.

Therefore, this issue does not rise to the level of a substantial issue in terms of the project's conformance with the certified LCP.

4. Privacy Needs of Adjacent Residences

The Appellant states that the new viewing deck will adversely impact the privacy needs of adjacent neighbors. As described, the new public access viewing deck is located between existing residences. According to the Appellant, the new deck will be just 21 feet from the adjacent resident's house.



There are two major reasons why this contention does not raise to the level of a substantial issue. First, and most importantly, the neighbors to the north and south of the project, whose privacy will likely be impacted most by the project, have already agreed to the development of a viewing platform. As described previously, the result of a quiet title action gave each adjacent neighbor approximately 4,250 square feet of the old Bay street right-of-way in exchange for leaving a 500 square foot area for a public access viewing platform. The location of the easement was pre-determined in the agreement with the County. Accordingly, the public viewing deck and approach is proposed entirely within the agreed upon area. Second, The County approved project was designed to minimize impacts to coastal resources as well as adjacent neighbors. The platform was significantly reduced in size (from 446 s.f. to 226 s.f.) and its location was shifted toward the fronting street to further avoid disruptions to adjacent property owners. In fact, the site plans show that the viewing platform only slightly encroaches between the two adjacent homes. Based on these plans, it appears that most of the development is located close to the street where disturbance already exists.

Because of the reasons described above, this issue does not rise to the level of a substantial issue in terms of the project's conformance with the certified LCP.

B. Substantial Issue Conclusion

The County-approved project is development that is not atypical from the existing Baywood peninsula character in terms of size, scale, and design. The approved project is substantially consistent with neighboring development along Pasadena Drive, and would have an insignificant impact on the public viewshed, landform alterations, and the adjacent neighbor's privacy.

Furthermore, the project must be viewed in light of the fact that public access viewing decks such as this are high priorities under the Local Coastal Program (LCP) because it promotes public access, coastal recreation, and visitor-serving uses. The proposed project provides for the implementation of a public viewing deck already agreed upon and anticipated by the adjacent neighbors. While a number of issues are raised by the appeal, the overall benefits to public access and recreation far outweigh the insignificant impacts to coastal resources posed by project implementation.

Thus, the Commission finds that no substantial issue exists with respect to this project's conformance with the certified San Luis Obispo County LCP and declines to take jurisdiction over the coastal development permit for the project.

